

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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MICHAEL P. DAY, )  
Plaintiff, ) CIVIL ACTION  
v. ) NO. 18-10396-FDS  
CHARLES GRACY and )  
MARK GRACY, )  
Defendants. )  
\_\_\_\_\_  
)

**DEFENDANTS' MOTION FOR PARTIAL DISMISSAL**

Pursuant to Fed. R. Civ. P. 12(b)(6), defendants Charles Gracy and Mark Gracy move to dismiss Count XI of the Complaint because the plaintiff fails to state a claim for violation of G. L. c. 93A, §§ 2, 9. Specifically, the Complaint fails to allege any facts supporting the assertion that the defendants were engaged in trade or commerce as required by Chapter 93A, and fails to allege facts that would transform a supposed simple breach of contract into unfair and deceptive trade acts or practices in violation of Chapter 93A.

In support of this motion, defendants relay on their Memorandum of Law, filed herewith, and the allegations of the plaintiff's Complaint.

**REQUEST FOR RELIEF**

Defendants Charles Gracy and Mark Gracy request that the Court dismiss Count XI of the Complaint with prejudice because the Complaint fails to state a claim for a violation of G.L. c. 93A upon which the Court can grant relief.

Date: June 15, 2018

CHARLES GRACY and MARK GRACY  
By their attorney,

/s/ Philip H. Graeter

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 15, 2018.

/s/ Philip H. Graeter

Philip H. Graeter